
By: **Delegates Morhaim, Nathan-Pulliam, and Redmer**

Introduced and read first time: February 3, 2003

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Hospitals - HIV Testing - Health Care Providers**

3 FOR the purpose of requiring certain individuals in a hospital to order tests to be
4 conducted in a certain manner on blood samples or other body fluids of certain
5 individuals for the presence of antibodies to the human immunodeficiency virus
6 (HIV) under certain circumstances; establishing a certain exception for HIV
7 tests conducted under this Act to the requirement that informed consent be
8 obtained before conducting an HIV test; requiring certain individuals to disclose
9 the results of HIV tests conducted under this Act in a certain manner to certain
10 individuals and provide counseling to certain individuals under certain
11 circumstances; specifying the confidentiality of certain medical records and
12 other information; requiring hospitals to adopt certain procedures; specifying
13 the payment of costs for HIV tests conducted under this Act; providing for a
14 certain limitation of liability for certain individuals under this Act; defining
15 certain terms; and generally relating to conducting tests on blood samples or
16 other body fluids of individuals in a hospital for the presence of antibodies to the
17 human immunodeficiency virus (HIV) under certain circumstances.

18 BY repealing and reenacting, with amendments,
19 Article - Health - General
20 Section 18-336(b) and 18-338.1(b)
21 Annotated Code of Maryland
22 (2000 Replacement Volume and 2002 Supplement)

23 BY adding to
24 Article - Health - General
25 Section 18-338.3
26 Annotated Code of Maryland
27 (2000 Replacement Volume and 2002 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Health - General

2 18-336.

3 (b) Except as provided in Title 11, Subtitle 1, Part II of the Criminal Procedure
4 Article OR § 18-338.3 OF THIS SUBTITLE, before obtaining a fluid or tissue sample from
5 the body of an individual for the purpose of testing the fluid or tissue for the presence
6 of HIV infection, a health care provider shall:

7 (1) Obtain written informed consent from the individual on a uniform
8 HIV informed consent form that the Department shall develop consistent with the
9 requirements of the Department as established by regulations adopted by the
10 Department; and

11 (2) Provide the individual with pretest counseling, including:

12 (i) Education about HIV infection and methods for preventing
13 transmission;

14 (ii) Information about a physician's duty to warn; and

15 (iii) Assistance in accessing health care available to an individual
16 who tests positive for the HIV infection.

17 18-338.1.

18 (b) [A] EXCEPT AS PROVIDED IN § 18-338.3 OF THIS SUBTITLE, A physician,
19 nurse, or designee of a health care facility shall, at the request of an exposed health
20 care provider, seek the informed consent of a patient to test a blood sample of the
21 patient for the presence of HIV when:

22 (1) There has been an exposure between the patient and the health care
23 provider;

24 (2) The health care provider involved in the exposure has given prompt
25 written notice of the exposure, in accordance with the standards of the health care
26 facility, to the chief executive officer or the chief executive officer's designee of the
27 health care facility where the exposure occurred;

28 (3) The exposure occurred based on the judgment of a physician who is
29 not the health care provider involved in the exposure; and

30 (4) The health care provider involved in the exposure has given informed
31 consent and has submitted a blood sample to be tested for the presence of HIV in
32 accordance with the provisions of subsection (d) of this section.

33 18-338.3.

34 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
35 INDICATED.

1 (2) (I) "BODY FLUIDS" MEANS:

2 1. ANY FLUID CONTAINING VISIBLE BLOOD, SEMEN, OR
3 VAGINAL SECRETIONS; OR

4 2. CEREBROSPINAL FLUID, SYNOVIAL FLUID, OR AMNIOTIC
5 FLUID.

6 (II) "BODY FLUIDS" DOES NOT INCLUDE SALIVA, STOOL, NASAL
7 SECRETIONS, SPUTUM, TEARS, URINE, OR VOMITUS.

8 (3) "EXPOSURE" MEANS AS BETWEEN A PATIENT AND A HEALTH CARE
9 PROVIDER:

10 (I) PERCUTANEOUS CONTACT WITH BLOOD OR BODY FLUIDS;

11 (II) MUCOCUTANEOUS CONTACT WITH BLOOD OR BODY FLUIDS;

12 (III) OPEN WOUND, INCLUDING DERMATITIS, EXUDATIVE LESIONS,
13 OR CHAPPED SKIN, CONTACT WITH BLOOD OR BODY FLUIDS FOR A PROLONGED
14 PERIOD; OR

15 (IV) INTACT SKIN CONTACT WITH LARGE AMOUNTS OF BLOOD OR
16 BODY FLUIDS FOR A PROLONGED PERIOD.

17 (4) (I) "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL WHO IS
18 LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH
19 OCCUPATIONS ARTICLE OR THIS ARTICLE TO PROVIDE HEALTH OR MEDICAL CARE
20 IN:

21 1. THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A
22 PROFESSION; OR

23 2. AN APPROVED EDUCATION OR TRAINING PROGRAM.

24 (II) "HEALTH CARE PROVIDER" INCLUDES ANY AGENT OR
25 EMPLOYEE OF A HOSPITAL.

26 (III) "HEALTH CARE PROVIDER" DOES NOT INCLUDE AN INDIVIDUAL
27 WHO IS ELIGIBLE TO RECEIVE NOTIFICATION UNDER THE PROVISIONS OF § 18-213
28 OF THIS TITLE, INCLUDING ANY LAW ENFORCEMENT OFFICER OR ANY MEMBER OF
29 ANY FIRE DEPARTMENT, AMBULANCE COMPANY, OR RESCUE SQUAD.

30 (5) "HIV" MEANS THE HUMAN IMMUNODEFICIENCY VIRUS THAT CAUSES
31 ACQUIRED IMMUNE DEFICIENCY SYNDROME.

32 (6) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THIS ARTICLE.

33 (B) NOTWITHSTANDING THE PROVISIONS OF § 18-338.1 OF THIS SUBTITLE,
34 THE DESIGNATED INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER OF A

1 HOSPITAL SHALL ORDER A TEST FOR THE PRESENCE OF ANTIBODIES TO THE HUMAN
2 IMMUNODEFICIENCY VIRUS (HIV) UNDER SUBSECTION (C) OF THIS SECTION WHEN:

3 (1) THERE HAS BEEN AN EXPOSURE IN A HOSPITAL BETWEEN A
4 PATIENT AND A HEALTH CARE PROVIDER THAT, IN ACCORDANCE WITH THE
5 CENTERS FOR DISEASE CONTROL RECOMMENDATIONS, WOULD WARRANT
6 RECOMMENDING OR OFFERING CHEMOPROPHYLAXIS TREATMENT FOR THE HEALTH
7 CARE PROVIDER;

8 (2) INFORMED CONSENT OF THE PATIENT TO TEST A BLOOD SAMPLE OF
9 THE PATIENT FOR THE PRESENCE OF HIV WAS SOUGHT AND THE PATIENT REFUSED
10 TO CONSENT;

11 (3) IN ACCORDANCE WITH HOSPITAL PROCEDURES, THE HEALTH CARE
12 PROVIDER INVOLVED IN THE EXPOSURE HAS GIVEN PROMPT NOTICE OF THE
13 EXPOSURE TO THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
14 DISEASE OFFICER WHERE THE EXPOSURE OCCURRED;

15 (4) THE HEALTH CARE PROVIDER INVOLVED IN THE EXPOSURE HAS
16 GIVEN INFORMED CONSENT AND HAS SUBMITTED A BLOOD SAMPLE TO BE TESTED
17 FOR THE PRESENCE OF HIV; AND

18 (5) THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
19 DISEASE OFFICER HAS MADE A DETERMINATION THAT THE TESTING OF BLOOD
20 SAMPLES OR OTHER BODY FLUIDS OF THE PATIENT FOR THE PRESENCE OF
21 ANTIBODIES TO THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) WOULD BE HELPFUL
22 IN MANAGING THE RISK OF DISEASE AND HEALTH OUTCOME OF THE HEALTH CARE
23 PROVIDER.

24 (C) IF THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION ARE
25 SATISFIED, THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
26 DISEASE OFFICER SHALL ORDER TESTS TO BE CONDUCTED FOR THE PRESENCE OF
27 ANTIBODIES TO THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) USING A TEST
28 PROCEDURE APPROVED BY THE DEPARTMENT ON:

29 (1) BLOOD SAMPLES ALREADY OBTAINED FROM THE PATIENT; OR

30 (2) BLOOD SAMPLES OR OTHER BODY FLUIDS COLLECTED FOR THE
31 PURPOSE OF HIV TESTING UNDER THIS SECTION.

32 (D) WHEN THE DESIGNATED HOSPITAL INFECTIOUS
33 DISEASE/COMMUNICABLE DISEASE OFFICER OBTAINS THE RESULTS OF AN HIV TEST
34 CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (C) OF THIS
35 SECTION, THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE
36 DISEASE OFFICER SHALL DIRECTLY NOTIFY THE PATIENT OF THE RESULTS OF THE
37 HIV TEST AND, TO THE EXTENT POSSIBLE, IN A MANNER THAT WILL PROTECT THE
38 CONFIDENTIALITY OF THE HEALTH CARE PROVIDER AND THE PATIENT.

39 (E) IF THE RESULTS OF AN HIV TEST CONDUCTED IN ACCORDANCE WITH THE
40 PROVISIONS OF SUBSECTION (C) OF THIS SECTION ARE POSITIVE, THE DESIGNATED

1 HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER SHALL PROVIDE
2 OR ARRANGE FOR THE PROVISION OF APPROPRIATE COUNSELING AND TREATMENT
3 RECOMMENDATIONS TO THE HEALTH CARE PROVIDER AND THE PATIENT.

4 (F) (1) NOTWITHSTANDING THE PROVISIONS OF TITLE 4, SUBTITLE 3 OF
5 THIS ARTICLE, THE MEDICAL RECORDS, INCLUDING ANY PHYSICIAN ORDER FOR AN
6 HIV TEST OR THE RESULTS OF AN HIV TEST CONDUCTED UNDER THIS SECTION, MAY
7 NOT BE DOCUMENTED IN THE MEDICAL RECORD OF THE PATIENT OR HEALTH CARE
8 PROVIDER.

9 (2) THE HOSPITAL WHERE THE EXPOSURE OCCURRED SHALL MAINTAIN
10 A SEPARATE CONFIDENTIAL RECORD OR INCIDENT REPORT FOR ALL HIV TESTS
11 CONDUCTED UNDER THIS SECTION.

12 (3) EACH HOSPITAL SHALL ADOPT PROCEDURES FOR THE
13 CONFIDENTIAL HIV TESTING OF BLOOD SAMPLES OR OTHER BODY FLUIDS USED OR
14 COLLECTED FOR PURPOSES OF THIS SECTION.

15 (4) EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS SUBSECTION, THE
16 MEDICAL RECORDS, INCLUDING ANY PHYSICIAN ORDER FOR AN HIV TEST OR THE
17 RESULTS OF ANY HIV TEST CONDUCTED UNDER THIS SECTION, ARE:

18 (I) CONFIDENTIAL; AND

19 (II) NOT DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY
20 CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION.

21 (5) IF THE IDENTITY OF THE PATIENT OR ANY OTHER INFORMATION
22 THAT COULD BE READILY ASSOCIATED WITH THE IDENTITY OF THE PATIENT IS NOT
23 DISCLOSED, THE RESULTS OF AN HIV TEST CONDUCTED ON A PATIENT FOR
24 PURPOSES OF THIS SECTION MAY BE INTRODUCED INTO EVIDENCE IN ANY
25 CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION INCLUDING THE ADJUDICATION OF A
26 WORKERS' COMPENSATION CLAIM.

27 (G) THE COSTS INCURRED IN PERFORMING AN HIV TEST ON A PATIENT IN
28 ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL BE PAID BY THE
29 HOSPITAL.

30 (H) EACH HOSPITAL SHALL DEVELOP WRITTEN PROCEDURES TO IMPLEMENT
31 THE PROVISIONS OF THIS SECTION.

32 (I) A HEALTH CARE PROVIDER OR HOSPITAL OR DESIGNEE OF A HOSPITAL
33 ACTING IN GOOD FAITH TO PROVIDE NOTIFICATION OR MAINTAIN THE
34 CONFIDENTIALITY OF THE RESULTS OF A TEST CONDUCTED UNDER THIS SECTION
35 MAY NOT BE HELD LIABLE IN ANY CAUSE OF ACTION RELATED TO A BREACH OF
36 PATIENT OR HEALTH CARE PROVIDER CONFIDENTIALITY.

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
38 effect October 1, 2003.